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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,863	09/02/2004	Teiichi Nishimura	00682P00680US	4700

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. MADISON STREET
SUITE 3800
CHICAGO, IL 60661

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/506,863

Applicant(s)

NISHIMURA ET AL.

Examiner

David J. Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) 22-25 and 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 26-33, 40, 41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Preliminary Amendment

1. Entry of applicant's preliminary amendment dated 9-2-04 into the application file is acknowledged.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restrictions

3. Applicant's election with traverse of Group I in the reply filed on 11-22-06 is acknowledged. There are no arguments to support the traversal.

The requirement is still deemed proper and is therefore made FINAL.

Claims 22-25, 34-39 and 42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11-22-06.

Information Disclosure Statement

4. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it begins with an implied statement.

Correction is required. See MPEP § 608.01(b).

Claim Objections

Art Unit: 3643

6. Claim 45 recites the limitation "the applicator" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-14, 18-20, 27/1, 28/1, 29/1, 31/1, 32/1, 44/1 and 45/1 are rejected under 35

U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,095,647 to Zobebe et al.

Referring to claim 1, Zobebe et al. discloses a pest controller comprising a portable container – at C, holding a chemical substance therewithin – see column 5 lines 63-68 and column 6 lines 1-7, wherein the container comprises a substance exposing portion – at the top of C and at 14'' and at 20, for exposing the chemical substance held therein to the outside – via item 14, and a cover – at 17, for sealing the substance exposing portion – see figure 4, the chemical substance containing an active ingredient with a pest controlling effect – see column 5 lines 63-68 and column 6 lines 1-7, and the active ingredient being volatilizable at a normal temperatures – see column 5 lines 63-68 and column 6 lines 1-7.

Referring to claim 2, Zobebe et al. discloses the chemical substance is contactable with an open air at the substance exposing portion so as to be released into the air therefrom when the cover is open – see at the top of C and 14'' in figures 4-5.

Referring to claim 3, Zobe et al. discloses the substance exposing portion is provided with an applicator – at 14, for applying the chemical substance onto a body – see figures 4-5 where item 14 is capable of performing the function of applying the chemical substance to a body.

Referring to claim 4, Zobe et al. discloses the substance exposing portion is constituted by a member having a porous bundle – at 14, a fibrous bundle – at 14, a member with a through hole – at 20, so that the chemical substance is exposed on a surface thereof – see figures 4-5.

Referring to claim 6, Zobe et al. discloses the chemical substance is directly held within the container – see at C in figure 4.

Referring to claim 7, Zobe et al. discloses the chemical substance has a fluidity – see column 5 lines 63-68 and column 6 lines 1-7, and wherein the container further comprises a substance storage – at the bottom of C, containing the substance – see figure 4, and a substance lead-out member – at 14, provided between the substance storage and the substance exposing portion – at 20, so as to lead the substance out of the substance storage through the substance lead out member to the substance exposing portion – see figures 4-5.

Referring to claim 8, Zobe et al. discloses the container – at C, accommodates a substance retaining member – at 14, the chemical substance being capable of flowing and retained in the substance retaining member – see at 14 in figures 4-5.

Referring to claim 9, Zobe et al. discloses the substance retaining member – at 14, is made of fiber – see column 3 lines 25-68.

Referring to claim 10, Zobe et al. discloses the container comprises a storage tank – at the bottom of C, and a temporary receptacle – at 19, for the chemical substance – see figures 4-5.

Referring to claim 11, Zobebe et al. discloses the container is of a cylindrical shape – see at C in figure 4, wherein the substance exposing portion – at 14,20, is placed at an end of the container of cylindrical shape – see figures 4-5.

Referring to claim 12, Zobebe et al. discloses the container further comprises a container body – at C, holding the chemical substance therewithin – see figure 4, wherein the body accommodates a substance retaining member – at 14, adapted to absorbing the chemical substance – see figures 4-6, the substance retaining member soaked with the chemical substance – see figures 5-6, and wherein the body is provided with the substance lead out member – at 20,21, adapted to leading out the chemical substance out of the body – see figures 4-6, a proximal part of the substance lead out member being in contact with the substance – via item 14 as seen in figures 5-6, and a distal part – at 21, being exposed out of the body – see figure 4.

Referring to claim 13, Zobebe et al. discloses the substance exposing portion is adapted to adjusting an exposing area of the chemical substance – see figures 4-6 where the amount of item 14 at 14'' disposed outside the container – at C, can be adjusted in that the distance – S can be made to different lengths.

Referring to claim 14, Zobebe et al. discloses the substance exposing portion has a window – at the top of 20,21, an opening are of which is changeable – by being open when the wick – at 14 is not in item 20,21 and then being closed when the wick – at 14 is placed into item 20.

Referring to claim 18, Zobebe et al. discloses the body – at C, is provided with a substance lead out member – at 19,20,21, adapted to leading the chemical substance out of the

body – see figures 4-6, and wherein to the substance lead out member a substance releasing member – at 14,14'', is separately provided is attachable – see figures 4-6.

Referring to claim 19, Zobe et al. discloses a container body – at C, holding the chemical substance therewithin – see figure 4, and an attachment – at 17,18, detachable from the body and attachable to the body in at least two ways of attachment, so as to hold a liquid chemical substance with fluidity therewithin and wherein the body is provided with a substance lead out member – at 14, adapted to leading the chemical substance out of the body – see figure 4, the attachment being provided with a cover – at 17, for sealing the substance lead out member – see figure 4, and a substance releasing member – at 14'', for helping releasing the chemical substance – see figures 4-6, the substance lead out member being sealed by attaching the attachment to the body in a particular position – see the dotted lines – at 17-18 in figure 4, and the chemical substance being supplied to the substance releasing member from the substance lead out member by attaching the attachment in another particular position – such as being unthreaded to the upper portion of C at item 16 as seen in figure 4.

Referring to claim 20, Zobe et al. discloses the container has a deformable portion – at 14, so that the chemical substance inside the container will be brought out by pressing the deformable portion – see at 14 in figures 4-6.

Referring to claim 27/1, Zobe et al. discloses the container further comprises a container body – at C, holding the chemical substance therewithin, and a cap – at 17,18, being separable from the body and being attached to the body so as to constitute the cover – see figure 4.

Referring to claim 28/1, Zobe et al. discloses the container is equipped with a holder – at 16, for attaching the controller to a body – at 19-21 – see figures 4-6.

Referring to claim 29/1, Zobe et al. discloses the container – at 19, has a tabular shape – see figures 5-6, and wherein the substance exposing portion is of a planar shape – see at 14 in figures 4-6.

Referring to claim 31/1, Zobe et al. discloses the container – at C, is adapted to be attached to clothes – via a person holding or touching the container C in which the container would be attached to the clothes of the person via intervening portions of the person's body such as hand and arms.

Referring to claim 32/1, Zobe et al. discloses the container has an attaching member – at 16, for attaching the controller to a body – at 18 – see figure 4.

Referring to claim 44/1, Zobe et al. further discloses opening the cover – at 17,18, of the controller at a spot for pests so as to volatilize the chemical substance containing the active ingredient into the air from the substance exposing portion – at 14, thereby getting rid of harmful pests – see figures 4-6.

Referring to claim 45/1, Zobe et al. further discloses contacting the applicator – at 14'', with a spot – at 5 and/or 20,21, for pests to apply the chemical substance on the spot – at 5 and/or 20/21, as seen in figures 1 and 4-6, so as to volatilize the chemical substance containing the active ingredient into the air thereby getting rid of harmful pests – see figures 1 and 4-6.

Art Unit: 3643

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 4,286,754 to Jones in view of Zobelet et al.

Referring to claim 1, Jones discloses a device comprising a portable container – at 16, holding a chemical substance therewithin – see column 4 lines 18-68 and column 5 lines 1-64, wherein the container comprises a substance exposing portion – at the top of 16 and – at 13, for exposing the chemical substance held therein to the outside – see figure 2, and a cover – at the top of 16, for sealing the substance exposing portion – see figure 2, the chemical substance containing an active ingredient which is volatilizable at a normal temperature – see column 4 lines 18-68 and column 5 lines 1-64. Jones does not disclose the active ingredient has a pest controlling effect. Zobelet et al. does disclose the active ingredient has a pest controlling effect see column 5 lines 63-68 and column 6 lines 1-7. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Jones and add the active ingredient having a pest controlling effect of Zobelet et al., so as to allow for the device to protect against unwanted insects/pests.

Referring to claim 5, Jones as modified by Zobelet et al. further discloses the substance exposing portion – at 13, is constituted by a ball member – see at 18-22 in figure 3 of Jones.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zobelet et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,501,033 to Wefler.

Referring to claim 15, Zobe et al. further discloses a substance lead out member – at 14, adapted to lead the chemical substance out of the body – see figures 4-6. Zobe et al. does not disclose a valve system being open by a predetermined operation, whereby the chemical substance inside creeps through the substance lead out member so as to be exposed out of the body. Wefler does disclose a valve system – at 28,30,40-46, being open by a predetermined operation – see at 46 in figures 3-4, whereby the chemical substance inside creeps through the substance lead out member – at 18, so as to be exposed out of the body – see via 20 in figures 3 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobe et al. and add the valve of Wefler, so as to control the flow of the liquid substance through the device.

Referring to claim 16, Zobe et al. does not disclose the substance holder having a follower moving according to a consumption of the chemical substance. Wefler does disclose the substance holder having a follower – at 46, moving according to a consumption of the chemical substance – see figures 3-4 and column 4 lines 11-58. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobe et al. and add the follower of Wefler, so as to control the flow of the liquid substance through the device.

Referring to claim 17, Zobe et al. as modified by Wefler does not disclose the follower is gel. However, applicant does not disclose that the follower being made of gel is critical to the operation of the invention and therefore it is deemed that the device of Zobe et al. as modified by Wefler is capable of performing equally as well with the follower being made of gel. Therefore it would have been obvious to one of ordinary skill in the art to take the device of

Art Unit: 3643

Zobe et al. as modified by Wefler and add the follower made of gel, so as to control the flow of the liquid substance through the device.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobe et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,783,081 to Pedrotti et al.

Referring to claim 21, Zobe et al. does not disclose the container has a pressurizer for increasing the inner pressure of the container so that the chemical substance is brought out. Pedrotti et al. does disclose a pressurizer – at 7, for increasing the inner pressure of the container so that the chemical substance is brought out – see figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobe et al. and add the pressurizer of Pedrotti et al., so as to allow for the chemical substance to be quickly moved from the device to the outside of the device.

Claim 26/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobe et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,647,164 to Yates.

Referring to claim 26/1, Zobe et al. does not disclose a heater for heating the chemical substance. Yates does disclose a heater – see column 5 lines 25-31. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zobe et al. and add the heater of Yates, so as to allow for the chemical substance to more quickly evaporate.

Claim 30/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobe et al. as applied to claim 1 above, and further in view of U.S. Patent No. 4,621,768 to Lhoste et al.

Referring to claim 30/1, Zobe et al. does not disclose the cover is a deformable sheet, that is removable from the container. Lhoste et al. does disclose a cover – at 3, being a deformable sheet that is removable from the container – at 1 – see figures 4 and 7 and column 2

Art Unit: 3643

liens 56-68 where the cover snaps onto the container and thus is deformed to be removed and attached to the container.

Claims 33/1, 40/1, 41/1 and 43/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobelet al. as applied to claim 1 above.

Referring to claim 33/1, Zobelet al. does not disclose the container is made of a biodegradable resin. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the container made of a biodegradable resin, so as to allow for the device to be more environmentally friendly.

Referring to claim 40/1, Zobelet al. does not disclose the active ingredient has a vapor pressure at 25 degrees C, within a range of 1×10^{-5} mmHg to 5×10^{-3} mmHg. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the active ingredient having a vapor pressure within the range of 1×10^{-5} mmHg to 5×10^{-3} mmHg, so as to allow for the active ingredient to be easily vaporizable.

Referring to claim 41/1, Zobelet al. does not disclose the active ingredient is a pyrethroid compound. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the active ingredient being a pyrethroid compound, so as to allow for the device to be harmful to pests.

Referring to claim 43/1, Zobelet al. does not disclose the chemical substance contains a sublimable dyestuff. However, it would have been obvious to one of ordinary skill in the art to take the device of Zobelet al. and add the chemical substance being a sublimable dyestuff, so as to allow for the device to be effective against pests.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to insect traps in general:

U.S. Pat. No. 2,573,672 to Reihnhardt – shows container with cover

U.S. Pat. No. 2,616,759 to Walsh – shows container with cover

U.S. Pat. No. 4,802,303 to Floyd – shows container with wick

U.S. Pat. No. 5,018,299 to Peek et al. – shows container with mount clip

U.S. Pat. No. 5,429,271 to Porter – shows container with mount clip

U.S. Pat. No. 5,749,168 to Chrysanthis – shows container with wick

U.S. Pat. No. 5,832,648 to Malone – shows container with cover

U.S. Pat. No. 6,189,259 to Soller – shows container with cover

U.S. Pat. No. 6,446,583 to Vieira – shows container with cover

JP Pat. No. 3-22939 – shows container with heater

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on Monday-Friday from 8am to 4pm.

Art Unit: 3643

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David Parsley
Patent Examiner
Art Unit 3643